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THE POSSIBILITIES AND LIMITATIONS OF MUNICIPAL CONTROL.

INTRODUCTORY ADDRESS.

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The duty of introducing the topic of this afternoon's session—"The Control of Public-Service Corporations"—demands that I should limit myself to the general principles involved rather than enter upon a detailed analysis of any one of the many phases of the question. The rapid changes in municipal policy during recent years makes this task all the easier, for in these changes the possibilities and limitations of municipal control are clearly reflected.

After a long and uninterrupted period of reckless franchise grants, we have suddenly awakened to the inconveniences of the situation. The increasing burden of local taxation has turned attention to the value of these franchises, and has given rise to a very definite demand that they be made a more important factor in the income account of the municipality. But here the opinion of the community divides, one group favoring a system which will compel the companies operating under the franchises to give a larger return for the privileges enjoyed, the other advocating direct municipal operation of the whole class of public-service industries. Widely divergent as these views are, they have one trait in common—to secure a larger return to the public treasury and thus relieve the burden of taxation. This view of the relation of the public-service industries to the public has been greatly strengthened by glowing accounts of European municipalities, where, we are assured, taxes are gradually disappearing because of a careful husbanding of public right and public property. We are even told that Glasgow is able to dispense with taxation and is now supporting herself with the proceeds of municipal public works.

The truth or falsity of these statements is not a matter with which we are concerned in the present connection, although I may say in passing that they are very far from the actual situation. My only purpose in citing them is to show the phase of the question which arouses the greatest interest in the American public.

But is this the only, is it even the most important, aspect of the problem? In dealing with corporations enjoying public franchises should the control of the municipality have as its main end the exacting of the largest possible pecuniary return for the privileges granted? If this be the case, the form of control will be exclusively financial and will end at the point at which the maximum money sum is assured. The tendency toward this interpretation is so strong, and, as I view the situation, so completely out of harmony with the best interests of the community that, unless speedily checked, the growing body of opinion in this field of municipal affairs is likely to be turned in the wrong direction.

To explain this attitude we must look to one of the peculiarities of American institutional growth. In no other country has there been so complete a differentiation between the political life of the community on the one hand, and its social and industrial activity on the other: We fail to distinguish between the "city" and the "municipality" and constantly reason as if the interests to be safeguarded are those of the public authority and the public treasury rather than those of the body of citizens considered as members of the community. In emphasizing the interest of the government, quâ government, we lose sight of the interests of the citizen. To such a point has this been carried that questions of governmental power are viewed exclusively as political rather than as economic and social problems. No attempt is made to bring governmental action into organic relation with the political and social life of the community. When, therefore, the problem of control over public-service corporations arises, the only question seems to be: "How

much can the public treasury obtain from such corporations?"

This narrow and one-sided view of the situation fails to take into account the important part which the street railway, water and gas service play in the daily life of the community. Under ordinary circumstances a reduction in taxation of five mills, or even of five cents per hundred dollars valuation, means little or nothing to the welfare of the community, no matter how cordially welcomed by the taxpayer. On the other hand, a reduction of street railway fares from six to five or four cents, or what is even more important, a change in motor power, which increases the rate of speed from seven to fifteen miles an hour, means a revolution in housing conditions and a strengthening of the industrial efficiency of the whole community. Similarly, a reduction in the price of gas from one dollar to fifty cents per thousand cubic feet may work far-reaching changes in industry, giving a new lease of life to the small producer through the introduction of the gas engine. The substitution of the gas for the coal-stove, which a low price of gas makes possible, is certain to work radical changes in the housekeeping problem. In a city like Glasgow, for instance, where under municipal operation the price of gas has been reduced with each advance in the economy of production, the diet of the laboring classes has undergone radical changes directly traceable to the economical cooking facilities thus offered. In Paris, on the other hand, where the public authority has been mainly interested in the annual return to the public treasury, petroleum still remains the illuminant of the poorer class and the variety of food is limited by the expensiveness of cooking. I take these instances from European cities because in the United States, owing to the higher rate of wages, the pressure has not been so keenly felt. We have hardly begun to realize the significance of a low price of gas to the social well-being of the community. The same is true of the water and street railway services.

When, therefore, we examine the status of the class of corporations under consideration, not merely in relation to the city government as such, but also in their broader relation to the interest and welfare of the whole community viewed as a group of consumers, the purely financial aspects of the question assume a position of secondary importance. We then see that the real test of efficient municipal control is to be found in the cost and quality of service rather than in the money return for the franchises granted.

The moment the interest of the consumer rather than that of the public treasury enters as the guiding principle in the control of the public-service corporations, it becomes necessary to examine each service with reference to the social and economic welfare of the community in order to determine where the emphasis of control is to be laid. In the gas service, for instance, the public is primarily interested in a low cost of service in order to utilize, to the fullest extent, the varied possibilities of gas as an illuminant, motor power and for purposes of heating and cooking. With the recent improvements in the mechanism of illumination we are rapidly approaching a point at which the candle power of the gas will be of secondary importance.

In the street railway service, on the other hand, rapidity of transportation, combined with comfort and convenience, are the primary requisites. With the higher rate of wages prevailing in American cities low fares must be placed second to the above requirements, and last of all comes the money payment to the city treasury for the privileges granted to the corporations performing the service. In other words, given the conditions of life in American communities, the emphasis must be laid on rapidity and comfort of service.

It may be that in European cities the most important end to be attained is cheapness of service, but this is simply another illustration of the fact that the question of control must be settled with reference to the peculiar needs of each locality. Given the antagonism to the tenement house

system characteristics of most American communities and the larger area covered by our cities which is the direct result of the demand for individual homes ; rapidity of transportation is indispensable and must be assured at any cost.

A comparison of the experience of American and European—particularly Continental municipalities in dealing with public-service corporations throws considerable light on the contrast between the two points of view above outlined. From the earliest establishment of a water, gas and street railway service, we find the authorities of European cities on the alert to obtain for the city the largest possible money return for privileges granted. Cheapness of service occupied a position of secondary importance, while efficiency, rapidity and convenience played but an unimportant part in determining the character of municipal control. The result has been that while the public-service corporations have been making large contributions to the public treasury, they have failed to make the improvements necessary to efficiency of service. The heavy fixed charges to which they were subjected combined with the low cost of service imposed upon them, discouraged experimentation with new methods and made the companies reluctant to make any radical changes involving the investment of large quantities of capital. The primitive system of urban transportation, which until within the last few years has been inflicted upon the population of European cities, has worked greater harm to the health, social condition and industrial efficiency of the population than can be calculated in a money sum. The evils of overcrowding, of which the unsatisfactory housing conditions are the most conspicuous, are directly traceable to the lack of a well-developed system of urban communication. It is a significant fact that in European cities the most efficient service is had through direct municipal operation, where considerations other than pecuniary profit are given due weight.

This sharp and striking contrast between European and American methods of granting franchises and of controlling public-service corporations contains a number of important lessons, both positive and negative. If we view the problem as a relationship between the corporations offering the service and the mass of consumers, we are forced to recognize that the absence of provisions for adequate pecuniary return for the privileges granted has not been without incidental benefit to the community. It has fostered a readiness to introduce improvements demanding enormous outlays of capital, to welcome the application of new motor forces, to experiment with the one-fare system; in short, to take risks which in the long run have proved great public benefits. It is true that so far as the corporations were concerned, these public benefits were incidental to the larger profits which they were seeking, but they remain none the less public benefits.

It is very far from my purpose to establish the rule that the fewer the conditions placed upon a franchise grant the greater will be the benefit to the community, but rather to enforce the principle that the conditions prescribed should relate, first, to the quality of the service, secondly, to its cost, and only after these requirements have been fulfilled should the money payment to the city be considered.

With the emphasis laid upon these elements, the problem of public control is simplified rather than complicated. Both as to quality and cost of service the community can readily form a correct opinion. The population is not dependent upon the municipal authorities for the data from which to form a judgment. Nor is there the same possibility of evasion, which is a constant menace to the effectiveness of purely financial control. There is hardly a city in the United States which has been able to secure for itself the stipulated participation in the profits of these companies. Whenever an actual money payment is in question, the temptation to evade it through the use of insidious corrupting influences

seems irresistible. In this field our administrative machinery is unable to cope with corporate power.

None of the recommendations thus outlined will dispense with the necessity of a careful control over the financial and administrative methods of these public-service corporations. This phase of the question will be so fully developed by the speakers who are to follow that I do not feel it necessary to say more than that the enforcement of this form of control will aid materially in demanding the kind of service which the community has a right to expect. At the present time we must accept without further question the statements of the officials of such companies as to the limit of concession which they are able to make. In order to make control effective, the public authority must be in a position to inform itself by independent examination.

This brings us to one phase of corporate financiering, the control of which constitutes the first step towards an effective supervision over this class of corporations, viz., the operations incidental to leasing, combination and consolidation. Given our system of constitutional protection to property rights, it is evident that if the public-service corporations are to be permitted to combine on such terms as they may see fit to adopt, the problem of control is greatly complicated owing to the capitalization of future profits which usually accompanies consolidation. Under such circumstances it often becomes impossible for a company to meet the legitimate demands of the public without doing serious injustice to the purchasers of the stock representing the inflated capitalization, and, what is even more important, the public authority is unable to force any concessions owing to the Fourteenth Amendment, which forbids a state—or any of its agents—from depriving a person of property without due process of law.

We are here face to face with one of the most difficult aspects of the question—the problem of maintaining public control

throughout the process of consolidation and after such consolidation has been effected.

As long as public opinion remained unalterably opposed to combinations between public-service corporations it was almost, if not quite impossible to devise or enforce any system of control. Legislation was confined, in the main, to strongly worded prohibitions which were evaded with ease and which contributed much to foster the feeling of mutual distrust between the public and the corporations. During recent years, however, there has been a marked movement of opinion towards a recognition of the fact that in this class of industries free competition is no guarantor either of cost or quality of service, and that the possibilities of control are strengthened by the unity of management which accompanies monopoly. We are now beginning to see that many of the most serious difficulties of control would have been avoided if, from the very start, we had recognized the advantages of monopoly instead of attempting the hopeless task of establishing a form of free competition which could not, in the nature of things, be maintained. The practical question before us at present is to facilitate such combination, maintaining at the same time public supervision over the conditions under which such combination is effected. As has already been pointed out, to permit the consolidating companies to capitalize future profits, binds the hands of the public authorities in their efforts to obtain greater efficiency or lower cost of service. If this danger be avoided, a conditional monopoly will offer the best means of improving the service. The municipality can make its control intensive instead of extensive, it can always hold a definite and relatively small number of persons responsible for the kind of service offered to the public, and finally, it can the more readily enforce a strict control over the finances of the corporation.

The enjoyment of monopoly during good behavior places the company in a position to take larger risks than would

be the case if the field were divided amongst a dozen or more competitors. Experimentation with new methods can only be safely carried on when the capital at the disposal of the concern is so large as to make success or failure a matter of indifference to its financial stability. This is particularly true of those corporations the nature of whose business enables them to experiment on definite portions of their plant without involving the whole. Furthermore, the advantage of co-ordinating the different parts of the street railway, gas or water system is evident at a glance. The benefit derived by the public is not so much in the economy of administration and operation thus effected as in the possibility of more readily adjusting the service to the changing needs of the community.

From this analysis of the possibilities of municipal control, it is clear where the emphasis must be laid if these services are to contribute to the welfare of the community within the full measure of their possibilities. As we advance from a narrower to a broader concept of government, as we begin more fully to appreciate the far-reaching effect of slight changes in quality and cost of service upon the industrial efficiency and social well-being of the community, we will be more ready to give due weight to the various elements involved in the control over public-service corporations.

The foregoing discussion of the possibilities of municipal control has given a clue to some of the limitations and dangers to which such control is subjected. To complete the analysis we must examine some recent industrial changes which have already introduced profound modifications into the problem of municipal control, and which bid fair to bring about changes of even greater importance in the near future.

We have become so accustomed to regard the gas, water and street railway services as purely local in character, that the adaptation of our administrative machinery to the new

conditions under which these industries are now carried on is extremely slow and is attended with great difficulty. The forces at work in destroying the local character of these industries are increasing in strength at a rate which must soon compel a readjustment of the system of control.

The first of these influences is the rapid growth of the suburban districts of our larger cities, offering profitable opportunity for the extension of the gas, water and street railway services beyond the limits of the city. With every such extension the economy of production and distribution has been increased and has finally led to the total disregard of municipal, county or township lines. As regards the water service this movement has been further strengthened by the necessity of seeking sources of supply at great distances from the distributing centers. The economy of supplying all the localities along the route dictates the inclusion of a considerable section of a state within the area of exploitation of a single company.

In the case of the street railways, the change in motor power from horse to electricity has completely revolutionized the service; furnishing the most striking instance of the changed relation of the municipality to this class of industries. What was once a purely local means of transportation has already become inter-urban and will soon constitute a network of communication throughout the various states.

As a direct result of these changes two important questions present themselves:

First, Can the municipality still be regarded as the effective unit of control over this class of corporations? and

Secondly, Can the state permit the municipality to fix the conditions under which these industries may be carried on?

One of the first principles of governmental control over industry is that the unit of control must not be inferior to the unit of exploitation; that is to say, the power of the public authority must, at least, be coterminous with the field of operation of the industry. This has ceased to be

the case with the street railway companies, and, to a certain degree, with the water and gas companies. Just as the difficulties of state control over corporations, particularly transportation companies doing an interstate business forced us into national control, so the extension of the municipal public-service industries beyond the limits of the municipality will force the substitution of some larger administrative unit—possibly the state itself—as the controlling authority.

The ease with which local control is evaded by companies operating one system through a number of municipalities immediately suggests itself as the most important argument in favor of a change in the form of control. All that is necessary is a skillful manipulation of accounts by which those portions of a street railway line or water plant which happen to be under the supervision of the most troublesome local authorities are burdened with an undue proportion of fixed charges and operating expenses. When, as in Massachusetts, it is not uncommon for a street railway company to operate under franchises from ten, and in one case from nineteen different towns, independent municipal control is out of the question. The state railroad commission is the recognition in law of this condition of fact.

The dangers involved in independent municipal control are not confined, however, to the mere question of corporate supervision but include the efficiency of the service as well. In fact this is by far the most important aspect of the question. The traditions of local self-government in which we have been trained lead us to regard municipal control over the granting of franchises with the same unquestioned assurance as the ownership of the public highways, in fact the former as part of and incident to the latter.

The harmony between these two powers remained undisturbed as long as the effects of local control did not extend beyond the limits of the municipality. With the expansion of the public-service industries, however, an entirely new

situation confronts us. Territorial districts larger than the municipality, yes, even the state itself, have a real, a vital interest in the conditions of a franchise grant. The state can no more permit one or two towns to hold up a great system of public transportation or the inter-urban distribution of water or gas, than it can tolerate the blocking of great public improvements by individual property owners.

Nor is this difficulty likely to disappear. Municipalities are being subjected to increasing temptations to exploit their strategic position by placing extortionate burdens upon public service companies. Here again the tendency to lay exclusive emphasis upon the money return for the franchises, rather than upon quality of service, increases the danger of conflict between the interests of the local treasury and the community at large. The only possible outcome of the situation will be that the conditions of franchise grants by local authorities will be subject to review by a state board, or that the state law will set the terms or at least the limits of local authority.

To sum up briefly the conclusions of this introductory discussion: An attempt has been made to show that the municipal public service industries must be considered in their relation to the industrial progress and social welfare of the community and that the relation between the municipality and the corporations performing these services must be adjusted with this end in view. Pecuniary return must be subordinated to quality and cost of service. Keeping both of these in view, it is evident that the old opposition to combination and monopoly in this class of services is out of harmony with the best interests of the community.

Finally, the changes in the conditions of these industries themselves has threatened, and promise still further to undermine the efficiency of municipal control. In the readjustment which must soon be made, municipal control must be subordinated to the larger interests of the state.